



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NO. 90-24

Acceptance Of Private Consulting Work Where Such Work
Is Funded By One's State Employer And Related To One's
State Duties

Dr. Andrew L. Miser, Executive Director of a non-profit consulting firm known as "Common Green Corporation," has asked the Ethics Commission for an advisory opinion regarding the propriety of hiring employees of the State of Connecticut Department of Mental Retardation (DMR) to act as private consultants to various agencies, including the DMR and several private care providers which are regulated by the DMR. The DMR's current contract with Common Green funds most of the corporation's activities in Connecticut, including staff salaries and administrative costs.

Common Green's services consist of a four-part program known as "Person-Oriented Planning Work" which is designed to assist persons with behavioral disabilities such as mental retardation or aggressive or self-abusive behavior. A Common Green consultant first meets with the client and his family in order to assess problems, then prepares an evaluation of issues which might contribute to the behavioral problems. The consultant next prepares a plan for the client's future and, finally, identifies and attempts to provide the types of services necessary to effect the plan.

In general, care providers such as the DMR enlist the aid of Common Green when they find they have been unable to cope with or assist a particular client, and in particular when the client's behavior places him at risk of losing his placement in a group home or other facility. Application of Common Green's four-step plan is intended to alleviate the problems and may allow a client to remain at a current placement, although occasionally the consultant will recommend a new placement with a different provider.

Conn. Gen. Stat. §1-84(b) is designed to prevent conflicts of interest with state employment by prohibiting the acceptance by a state employee of other employment which will either impair his

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independence of judgment with respect to his state duties or which will result in his disclosure of confidential information acquired in the course of his state service. In addition, Conn. Gen. Stat. §1-84(c) prohibits a state employee from using his public position or confidential information acquired as a result of such position to obtain personal financial gain.

"Conflicts of interests, both real and apparent, are almost inevitable when a State employee accepts outside employment with an entity which can benefit from the employee's official actions." Ethics Commission Advisory Opinion No. 88-14; 50 Conn. L. J. No. 15, p. 1D (October 11, 1988). The issues raised by the proposed hiring of DMR employees to implement Common Green's program as consultants are numerous, but at least two prohibitions are clear:

First, any DMR employee whose responsibilities include the auditing or regulation of Common Green or of any of the various private care providers also serviced by Common Green, or who is in any substantive way involved in the process of awarding contracts or allocating monies to those entities or competing organizations, would clearly be precluded by the language of Conn. Gen. Stat. §1-84(b) from accepting a position with the corporation. A consultant acting on behalf of and accepting remuneration from Common Green could not objectively and independently exercise regulatory or administrative responsibilities as a state employee either with respect to the corporation itself or with respect to the private care providers which might request the services of the corporation.

Second, a DMR employee whose state responsibilities include client contact or evaluation could not accept a position with the corporation, on the ground that such employee's judgment with respect to such contact or evaluation would undoubtedly be affected by the knowledge that a referral of the client to Common Green would benefit the corporation. The prohibition is even more compelling against a DMR employee's acceptance of a position with the corporation to perform services in the facility, region or district in which he is employed by the State of Connecticut, inasmuch as in such case the employee's official action would potentially result in a direct personal benefit.

Finally, the hiring of any DMR employee by Common Green is problematic. The potential for misuse of confidential information does not appear to be significant, since Common Green consultants have unrestricted access to all client information. However, the hiring by Common Green of a DMR employee raises the question of whether the employee has been selected merely because